

**REMARKS**

**I. Status of the Claims**

Claims 1, 2, 4-12, 14, 15, 28, 30-36 and 43 are pending. Claims 1, 9 and 10 are amended to correct grammatical errors. No new matter has been added to the claims.

**II. Specification/Abstract/Drawings**

In an effort to expedite the prosecution of this application, Applicants have amended the specification, abstract, and drawings to conform with the Examiner's requirements for related application Serial No. 10/155,400. The specification has been amended in two places to correct the order of authorship in the Vyas reference. The abstract has been amended to conform to MPEP §608.01(b). No new matter has been added to the abstract. Support for the amendments may be found, for example, on page 1, lines 21-23; page 4, lines 11-13; page 5, lines 9-11; page 16, lines 9-10; and page 17, lines 23-27.

**III. Election/Restriction Requirement**

The Examiner is requiring an election of one of the following inventions under 35 U.S.C. §121:

- I. Claims 1, 2, 4-6, 10, 11, 14, 15, 28, 30-36 and 43, in part, and 7, 9 and 12 drawn to AviIII proteins comprising a catalytic domain of GH74 derived from SEQ ID NO: 3 and a CBD derived from SEQ ID NO: 4.
- II. Claims 1, 2, 4-6, 10, 11, 14, 15, 28, 30-36 and 43, in part, and 8 drawn to AviIII proteins comprising a catalytic domain of GH74 derived from SEQ ID NO: 3 and a CBD derived from SEQ ID NO: 5.
- III. Claims 28, 30-36 and 43, in part, drawn to any polypeptide comprising SEQ ID NO: 3.
- IV. Claims 28, 30-36 and 43, in part, drawn to any polypeptide comprising SEQ ID NO: 4.

- V. Claims 28, 30-36 and 43, in part, drawn to any polypeptide comprising SEQ ID NO: 5.
- VI. Claims 28, 30-36 and 43, in part, drawn to any polypeptide comprising SEQ ID NO: 4 and SEQ ID NO: 5.
- VII. Claims 28, 30-36 and 43, in part, drawn to any polypeptide comprising SEQ ID NO: 3, SEQ ID NO: 4, and SEQ ID NO: 5.

Preliminary election of Group I is hereby made, with traverse. One reason why we traverse this requirement is that all of the groups are encompassed by Group I, yet the requirement is stated as a restriction, not an election. This must be the case because a single generic sequence encompasses all of the groups. Because the Group I claims encompass all other groups, the respective groups are not independent and distinct. Group I is generic. Group one consists of claims 1, 2, 4-6, 10, 11, 14, 15, 28, 30-36 and 43, in part, and 7, 9 and 12 drawn to AviIII proteins comprising a catalytic domain of GH74 derived from SEQ ID NO: 3 and a CBD derived from SEQ ID NO: 4. Additionally, no additional burden falls on the examiner by having to search the Group I claims in addition to the other groups. MPEP §803 states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent or distinct as claimed;
- and**
- (B) There must be a serious burden on the examiner if restriction is required.**

Specifically, there is no undue burden, for example, where Group I encompasses Group II, as SEQ ID NO. 5 is a portion of SEQ ID NO. 4. Tables 1 and 2 (pp. 6-7) of the application, show that SEQ ID NO. 4 begins at base pair 2575, of SEQ ID NO. 1, and ends at about base pair 3000, while SEQ ID NO. 5 begins at base pair 2575 and ends at base pair 2838. Therefore, examination of Group I would necessitate the examination of Group II, and, thus, all pending claims.

Furthermore, the examination of Group I would involve a search of SEQ ID NO: 3 and SEQ ID NO: 4, which encompasses SEQ ID NO: 5. The Examiner would then have the information necessary to evaluate claims 28, 30-36 and 43, in part, drawn to any polypeptide comprising one or more of the aforementioned SEQ ID's. We respectfully request withdraw of the restriction requirement and consideration of all currently pending claims.

While claims 30 and 32 are deemed generic, the Group 1-VII claims are further subject to an election requirement for:

- A 6-His tag,
- B. thioredoxin,
- C. hemagglutinin,
- D glutathione S-transferase,
- E. OmpA signal sequence tag, and
- F. leucine zipper.

We fail to understand the nature of this election, since all of these terms are found in a single claim—claim 33. There do not appear to be different claims that are electable, and the Office has not identified the particular claims it believes fall within the electable species. This being the case, and since some election must be made in response to the requirement, Applicant elects the species of claim 33, and further elects the leucine zipper to the extent that the election requirement can be understood. However, Applicant prefers to elect the species of SEQ ID NO. 3, which the Office has not specifically enunciated as a species. SEQ ID NO. 3 forms a specific embodiment of the possibilities encompassed by claim 1, which Applicant regards more particularly as involving the broader invention than the fusion proteins of the election.

#### **VI. Conclusion**

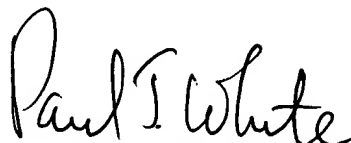
Applicants' attorney respectfully solicits a Notice of Allowance in this application. The Commissioner is authorized to charge any additionally required fees to deposit account 14-0460. Should the Examiner have any questions, comments, or suggestions

that would expedite the prosecution of the present case to allowance, Applicants' undersigned representative earnestly requests a telephone call at (303) 384-7575.

Respectfully Submitted,

Date: \_\_\_\_\_

3/16/04



Paul J. White, Reg. No. 30,436  
Senior Patent Counsel

National Renewable Energy Laboratory  
1617 Cole Boulevard  
Golden, CO. 80401  
(303) 384-7575